

SIDNEY NOEL HOFFMAN,

Plaintiff,

vs.

LINCOLN COUNTY SHERIFF'S
DEPARTMENT et al.,

Defendants.

THIS MATTER is before the Court upon the filing of a summary judgment motion by various Defendants, (Doc. No. 52), and on three motions to dismiss by various Defendants, (Doc. Nos. 40; 43; 54). In accordance with Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), the Court advises Plaintiff, who is proceeding pro se, that he has a right to respond to Defendants' motions. The Court advises Plaintiff that failure to respond to the Motions to Dismiss may result in dismissal of some or all of his claims.

The movant has the “initial responsibility of informing the district court of the basis for its motion, and identifying those portions of the pleadings, depositions, answers to

interrogatories, and admissions on file, together with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact.” Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986) (internal citations omitted).

Once this initial burden is met, the burden shifts to the nonmoving party. The nonmoving party “must set forth specific facts showing that there is a genuine issue for trial.” Id. at 322 n.3. The nonmoving party may not rely upon mere allegations or denials of allegations in his pleadings to defeat a motion for summary judgment. Id. at 324. The nonmoving party must present sufficient evidence from which “a reasonable jury could return a verdict for the nonmoving party.” Anderson, 477 U.S. at 248; accord Sylvia Dev. Corp. v. Calvert County, Md., 48 F.3d 810, 818 (4th Cir. 1995).

If Plaintiff has any evidence to offer to show that there is a genuine issue for trial, he must now present it to this Court in a form which would otherwise be admissible at trial, i.e., in the form of affidavits or unsworn declarations. Federal Rule of Civil Procedure 56(c) provides that:

(1) *Supporting Factual Positions.* A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(2) *Objection That a Fact Is Not Supported by Admissible Evidence.* A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

(3) *Materials Not Cited.* The court need consider only the cited materials, but it

may consider other materials in the record.

(4) Affidavits or Declarations. An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

An affidavit is a written statement under oath; that is, a statement prepared in writing and sworn before a notary public. An unsworn statement, made and signed under the penalty of perjury, may also be submitted. Affidavits or statements must be presented by Plaintiff to this Court no later than fourteen (14) days from the date of this Order, and must be filed in duplicate.

Plaintiff's failure to respond may result in Defendants being granted the relief they seek by way of summary judgment and dismissal of the Complaint with prejudice.

IT IS, THEREFORE, ORDERED that:

1. Plaintiff shall respond to the pending motions within **fourteen (14) days** of entry of this Order. Failure to file a timely and persuasive response will likely lead to the dismissal of this lawsuit.
2. The Clerk of Court is directed to send a copy of this Order to the pro se Plaintiff by certified U.S. mail, to the following address: Caledonia Correctional Institution, Legal Mail, Box 137, Tillery, NC 27887.

Signed: November 20, 2012



Robert J. Conrad, Jr.
Chief United States District Judge

